

SANITIZED DECS. – 02-254 SV, 02-255 K & 02-256 CP – BY – GEORGE V. PIPER – ISSUED – 04/24/03 – SUBMITTED FOR DECISION – 01/10/03

SYNOPSIS

SEVERANCE TAX -- RECLAMATION TAX -- SPECIAL TAX ON COAL – BURDEN OF PROOF -- Assessments will be revised post-audit as permitted by W. Va. Code § 11-10A-10(e) [2002], if Petitioner can prove that a portion of the assessments were paid by another entity.

ADMINISTRATIVE DECISION

The Director of the Division issued a severance tax assessment against the Petitioner. This assessment was for the period of April 1, 1997 through December 31, 2000 for tax, interest, through January 31, 2002, and additions to tax.

Also, on January 22, 2002, the Division issued a reclamation tax assessment against the Petitioner. This assessment was for the period of January 1, 1998 through December 31, 2000 for tax, interest, through January 31, 2002, and additions to tax.

Also, on January 22, 2002, the Division issued a special tax on coal assessment against the Petitioner. This assessment was for the period of January 1, 1998 through December 31, 2000 for tax, interest, through January 31, 2002, and additions to tax.

Thereafter, the Petitioner timely filed petitions for reassessment.

At the conclusion of the administrative hearing Petitioner was advised by the administrative law judge that the hearing record would be held open for a period not to exceed thirty (30) days.

During that period of time Petitioner was to establish personal contact with one particular mining company for the sole purpose of acquiring exculpatory

evidence from same, which would conclusively prove that a portion of the disputed taxes had in fact been paid over to the mining company who in turn had remitted same to the Division on behalf of the Petitioner. Further, Petitioner was advised that should the mining company refuse to exonerate the Petitioner in this regard, Petitioner must immediately inform this tribunal of that fact, which would result in the record being closed.

It should be noted that the additions to tax were imposed in this case because Petitioner failed to file returns.

DETERMINATION

The sole issue is whether Petitioner has shown that the assessments are incorrect and contrary to law, in whole or in part, as required by W. Va. Code § 11-10A-10(e) [2002].

In this case it is **DETERMINED** that Petitioner has proved that certain amounts of the coal had been indeed reported in duplicate on one of the coal company's tax returns.

WHEREFORE, it is the **DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the severance tax assessment issued against the Petitioner for the period of April 1, 1997 through December 31, 2000, should be and is hereby **MODIFIED** in accordance with the above Determination(s) for tax, interest, on the revised tax, updated through December 31, 2002 and additions to tax, for a total revised liability.

It is **ALSO** the **DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the reclamation tax assessment issued against the Petitioner for the

period of January 1, 1998 through December 31, 2000, should be and is hereby **MODIFIED** in accordance with the above Determination(s) for tax, interest, on the revised tax, updated through December 31, 2002, and additions to tax, for a total revised liability.

It is **ALSO** the **DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the special tax on coal assessment issued against the Petitioner for the period of January 1, 1998 through December 31, 2000, should be and is hereby **MODIFIED** in accordance with the above Determination(s) for tax, interest, on the revised tax, updated through December 31, 2002, and additions to tax, for a total revised liability.